



INDIANA COURT OF APPEALS ORAL ARGUMENT AT A GLANCE WAWASEE HIGH SCHOOL



JERALD J. WOMACK V. STATE OF INDIANA

Appeal from:

Kosciusko Circuit Court
The Honorable Rex L. Reed, Judge

Oral Argument:

Thursday, April 24, 2008
9:30—10:10 a.m.
20 minutes each side

CRIMINAL LAW

- 1) Did the police search of the car which Mr. Womack had been driving violate his rights under the U.S. and Indiana constitutions?**
- 2) Did the State fail to prove that he possessed the marijuana that was found in the car?**
- 3) Did the State fail to prove that he was the same person who had been charged and convicted of dealing in marijuana in Morgan County?**
- 4) Is Mr. Womack's sentence inappropriate in light of the nature of the offense and his character?**

Facts and Procedural History

At approximately 11:59 p.m. on July 13, 2006, Kosciusko Sheriff's Deputy Richard Shepherd was on routine patrol in Warsaw when he noticed a brown station wagon that failed to stop at a stop sign. Deputy Shepherd activated his vehicle's lights and began pursuit. After the station wagon appeared to pull over, it drove off again and Deputy Shepherd activated his siren. After three to five minutes, the brown station wagon pulled into a residence at 601 East Prairie Street, with Deputy Shepherd closely behind. By this time, Deputy Shepherd had determined that the station wagon was registered to Womack and Delores R. Womack. As Deputy Shepherd put his vehicle into parking gear, Jerald Womack opened the driver's-side front door of the station wagon, apparently leaving the door open, and began to run around

the house.

Although Deputy Shepherd lost visual contact with Womack, Winona Lake Police Officer Joseph Bumbaugh soon arrived with his K-9 unit and tracked Womack to a nearby woods, where he was apprehended. Meanwhile, Indiana State University student-intern Cory Fields, who was riding with Deputy Shepherd that night, had secured both of the vehicles in Womack's driveway. Fields had joined Deputy Shepherd in the chase before Deputy Shepherd sent him back to the front of the house after approximately three minutes. When he returned, Fields saw "a lady coming up the street towards our squad car[.]" When the woman "started to go towards the car[.]" Fields told her not to approach it, and she "stopped and went towards the house."

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After Womack was taken into custody, Officer Bumbaugh returned to Womack's vehicle with his K-9 unit. According to Officer Bumbaugh, his K-9 indicated the presence of illegal drugs on the floor in front of the driver's seat when it was allowed to smell the interior of Womack's station wagon. After indicating the presence of illegal drugs on the driver's side, the K-9 indicated the presence of them in the glove compartment when it was allowed to smell the interior of the car on the passenger's side. Officer Bumbaugh found a cigarette box in the glove compartment, which was later determined to contain 0.91 grams of marijuana. Kosciusko County Sheriff's Corporal Kevin Gelbaugh found what appeared to be three partially-smoked marijuana cigarettes, two on the driver's-side floor and one on the seat. At some point, Corporal Gelbaugh detected the odor of burnt marijuana coming from the interior of the station wagon.

On July 14, 2006, the State charged Womack with Class D felony resisting law enforcement and Class D felony marijuana possession and alleged that he was a habitual controlled substance offender. After a trifurcated trial, a jury found Womack guilty of Class A misdemeanor resisting law enforcement and Class D felony marijuana possession and found that he was a habitual controlled substance offender. (Womack does not challenge his conviction for resisting law enforcement.) During the controlled substance offender phase, Martinsville Police Officer Jeffrey Buskirk affirmed that Womack was the same person convicted of marijuana delivery in cause number 55D02-9401-CF-8. The trial court sentenced Womack to

one year of incarceration for resisting law enforcement and three years for marijuana possession, both sentences to be served concurrently, enhanced by six years by virtue of Womack's habitual controlled substance offender status.

Parties' Arguments

I. The Search of Womack's Station Wagon

Womack argues the police lacked probable cause to believe that his station wagon contained contraband, in violation of the Fourth Amendment of the U.S. Constitution. Essentially, he contends that a K-9's indication that a vehicle contains contraband, standing alone, is insufficient to establish probable cause.

The State argues that law enforcement did have probable cause to search Womack's vehicle because precedent has shown that probable cause is established "when a sufficient basis of fact exists to permit a reasonably prudent person to believe that a search of those premises will uncover evidence of a crime."

II. Constructive Possession

Police found no marijuana on Womack's person, so the State was therefore required to prove that he had constructive possession of it, a burden Womack claims the State failed to carry.

The State argues that because Womack owned the car in

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which the drugs were found and was seen fleeing from that car, he possessed the contraband found in the car. In essence, the law infers that the party in possession of the “premises” (in this case, the vehicle) is capable of exercising dominion and control over all items on the premises. One of Womack’s arguments is that the State failed to prove he was the sole possessor of the items found in the premises that were searched.

III. Proof that Womack had the Required Number of Prior Controlled Substance Convictions

Womack contends that the State failed to prove that he was the same person who had been charged and convicted of dealing in marijuana in cause number 55D02-9401-CF-8.

The State argues that the identification of Womack in the Morgan County case is “unequivocal.” At trial, the State introduced Exhibit 22, which included copies of the charging information and judgment of conviction in cause number 55D02-9401-CF-8, which also tended to show that Womack was the subject of the prior conviction. The charging information alleged that “Jerald J. Womack did knowingly deliver marijuana” in Morgan County, and the judgment of conviction

indicated that “Jerald J. Womack” pled guilty to Class D felony dealing in marijuana.

IV. Appropriateness of Sentence

Womack contends that his nine-year aggregate sentence, which is three years fewer than the maximum he could have received, is inappropriate in light of the nature of the offense and his character. He argues that the majority of his convictions and charges have been for nonviolent crimes, mostly involving abuse or possession of alcohol or illegal drugs. Moreover, an employer wrote to the trial court indicating that Womack had been a skilled, trusted, and dependable worker for him for three or four years.

The State argues that Womack has an extensive criminal history, dating back to 1979. He has five prior felony convictions (including two others that were reversed and remanded for a new trial), six prior misdemeanor convictions, has served seven terms of incarceration totaling approximately twelve and one-half years, and has collected sixteen other criminal charges that were not reduced to conviction.

U.S. CONSTITUTION and INDIANA CONSTITUTION

United States Constitution: Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Indiana Constitution: Article 1, Section 11

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

TODAY'S PANEL OF JUDGES

Hon. John G. Baker (Monroe County), Presiding

- Judge of the Court of Appeals since June 1989
- Chief Judge since March 2007

John G. Baker is originally from Aurora in Dearborn County and lived in Monroe County for 35 years. Since June 1989, he has served as a Judge of the Indiana Court of Appeals representing the First District and has authored more than 3,000 majority opinions. Prior to becoming an appellate court judge, he served as county court and superior court judge for 13½ years in Bloomington, disposing of more than 15,000 cases.

Judge Baker graduated from Culver Military Academy and received his A.B. degree from Indiana University in 1968 in History and his J.D. from the Indiana University School of Law — Bloomington in 1971. He received his LLM in Judicial Process from the University of Virginia in 1995. Before assuming the trial bench, he was a partner in the firm of Baker, Barnhart and Andrews in Bloomington and was a Captain in the U.S. Army Reserves.

Since 1980, Judge Baker has taught as an adjunct professor at Indiana University's School of Public and Environmental Affairs and since 2004 at the School of

Law in Bloomington. In addition, Judge Baker has served on the faculties of the Indiana Judicial College, Indiana Continuing Legal Education Forum, and the National Institute of Trial Advocacy.

His professional associations include the American, Indiana State, Monroe County and Indianapolis Bar Associations. For the latter, he served as Vice-President in 1995. He has been a member of the Indiana Judges Association's Board of Managers continually since 1979 and served as its President from January of 1987 through June of 1989.

Judge Baker has been active in community and civic affairs as well. In addition to his church, YMCA, and other similar organizations, Judge Baker has been active in Boy Scouts of America since his youth and was awarded the rank of Eagle Scout.

Judge Baker was retained on the Court by election in 1992 and 2002. He and his wife have five children and — so far — four grandchildren.

“Appeals on Wheels”

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

This is the Court of Appeals' 215th case “on the road” since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. Terry Crone (St. Joseph County)

- Judge of the Court of Appeals since March 2004

Terry A. Crone was appointed to the Court of Appeals on March 8, 2004 and currently serves as the Presiding Judge of the Third District.

Judge Crone was raised in South Bend. He graduated *cum laude* from DePauw University in 1974 and from Notre Dame Law School in 1977. Judge Crone practiced law for nine years, concentrating in areas of civil practice, and served as the St. Joseph County Attorney from 1981 to 1986. In 1986, he was appointed Magistrate of the St. Joseph Circuit Court, where he served until his appointment as Judge of the St. Joseph Circuit Court in 1989.

Judge Crone is past President of the St. Joseph County Bar Association and a former member of the Board of Managers of the Indiana Judges Association, the

Supreme Court Committee on Character and Fitness, and the Alternative Dispute Resolution Committee of the Indiana Judicial Conference. Judge Crone is currently a member of the St. Joseph County, Indianapolis, Marion County, Indiana State and American Bar Associations, the American Judicature Society, and the Phi Delta Phi Honorary Legal Society.

Judge Crone is a frequent speaker at legal education programs. He helped found a program in South Bend to familiarize minority high school students with the law and related fields and was a founding member of the South Bend Commission on the Status of African-American Males and the St. Joseph County Coalition Against Drugs.

Judge Crone was retained on the Court of Appeals by election in 2006. He is married and has three daughters.

The 15 judges of the Indiana Court of Appeals issue more than 2,800 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



TODAY'S PANEL OF JUDGES

Hon. Cale J. Bradford (Marion County)

- Judge of the Court of Appeals since August 2007



Cale J. Bradford was appointed to the Court of Appeals by Governor Mitch Daniels and took his seat on August 1, 2007.

Prior to his elevation to the Court of Appeals, Judge Bradford served for more than 10 years as Judge of the Marion Superior Court, seven years in the criminal division and three in the civil division. He was twice elected presiding judge by his colleagues.

During this tenure, Judge Bradford chaired the Marion County Criminal Justice Planning Council, a group of local elected and appointed officials who recommended ways to improve the county's response to criminal justice problems, including jail overcrowding, staffing, and budget issues. His efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county's Juvenile Detention Center.

Before joining the bench, Judge Bradford served in the Marion County Prosecutor's Office for two years, overseeing a staff of more than 100 attorneys. For five years, he was an Assistant United States Attorney for the Southern District of Indiana, prosecuting major felony drug trafficking cases. He engaged in the private practice of law from 1986 to 1991, and served as both a deputy prosecutor and public defender during his career.

A native of Indianapolis, Judge Bradford received a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D. from Indiana University-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and a former member of both the Indiana Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference. He is a Distinguished Fellow of the Indianapolis Bar Association and has taught ICLEF seminars on trial practice for more than 10 years. From 2005 to 2007, Judge Bradford hosted "Off the Bench with Judge Cale Bradford," a legal commentary program on Marion County's government access network. He also served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary's policies on technology and electronic case management.

Judge Bradford is a former director of Indianapolis's John P. Craine House, a residential alternative to incarceration for women offenders with pre-school-aged children. He is a member of the Lawrence Youth Football League Advisory Board of Directors and the Lawrence Men's Soccer Booster Club. He and his wife, a full-day kindergarten teacher, have five children.

ATTORNEYS FOR THE PARTIES

For Appellant, Jerald J. Womack:
Michael W. Reed
Reed & Earhart Attorneys at Law, P.C.
Warsaw



Michael W. Reed is a native of Lansing, Michigan. He received his B.B.A., *summa cum laude*, from the University of Notre Dame in 1978 and his J.D. from Vanderbilt University in 1981. Mr. Reed is a second-generation lawyer who practices with his father. He is a partner in the Warsaw firm of Reed & Earhart.

Mr. Reed's legal memberships include the Kosciusko County Bar Association (Secretary, 1983-1984, Vice-President, 1985-1992, President, 1993-1997), the Indiana State Bar Association (Young Lawyers Section, Representative, 1982-1986, Director, 1987-1992, and Board of Governors, 2002-2004; nomina-

ting committee, membership and benefits committee, and member of House of Delegates), and the American Bar Association. He is also a member of the Indiana Bar Foundation.

Mr. Reed's community activities include the United Way of Kosciusko County, Inc., the Kosciusko County Shelter for Abuse, Inc., the Kosciusko County Child Protection Team, and First United Methodist Church in Warsaw. He and his wife Kathee, a retired teacher, have a daughter who graduated from Butler University and a son who graduated from Indiana University.

For Appellee, State of Indiana:
Ian McLean
Deputy Attorney General
Indianapolis

Ian McLean is a native of Crawfordsville. He received his B.A. from Grinnell College in Grinnell, Iowa, in 1985 and his J.D. from Indiana University-Bloomington in 1989. He was a judicial law clerk to the Hon. Clarkson S. Fisher, United States District Court for the District of New Jersey and the Hon. Pasco M. Bowman II, United States Court of Appeals for the Eighth Circuit.

Mr. McLean served as the Chief Deputy Prosecuting Attorney for Union County, Indiana and as a Deputy Prosecutor for Montgomery County, Indiana. He was in private

practice in Crawfordsville from 1995 until 2007 when he joined the Attorney General's office as a Deputy Attorney General.

He is the author of the chapter "Criminal Law and Natural Law" in *Common Truths: New Perspectives in Natural Law* (ISI Books, 2000) and "The Fuzzy Picture of Hitler's Pope," *32 Political Science Reviewer* (2003).

Mr. McLean and his wife, Sharon, reside in Crawfordsville with their daughter.